Cochrane v. *Rymill*, 40 L. T. (N. S.) 744, and *Hoffman* v. *Carew*, 20 Wend. 21, are cases in which it is held that an auctioneer selling as such, is liable in trover if he has no right to sell. The same rule would apply to a trustee or any one else. In *Williams* v. *Millington*, 1 H. Black. 81, it is held that an auctioneer may sue for the price of goods sold by him for an avowed principal. In *Hanson* v. *Robardeau*, Peake's N. S. C. 121; *Franklin* v. *Lamond*, *supra*; *Jones* v. *Littledale*, 6 Ad. & El. 486; *Mills* v. *Hunt*, *supra*, it is held that an auctioneer who sells goods is bound to deliver them. In none of these cases is the question of an implied warranty of title in any way involved.

DAVID STEWART.

Baltimore.

Supreme Court of Indiana.

HADLOCK *v.* GRAY.

A conveyance to husband and wife, without words of limitation, renders them tenants by entireties.

Such an estate may be limited to a life estate, and words clearly expressing an intention to create an estate for their joint lives, and providing that after the termi nation of such life-estate, the land shall be divided among the heirs of the husband and the heirs of the wife, creates a life estate in the husband and wife.

Land was conveyed to husband and wife, and it was provided in the deed that after the decease of the husband and wife, the land should be equally divided between the heirs of the husband and the heirs of the wife; and if the husband died before the wife, she should hold the property until her death; or if the wife died first, he should hold the land until his death, and at the death of both of them, it should be divided as previously stated: *Held*, that the husband and wife were not tenants by entireties; that the first taker did not take the estate in fee under the rule in Shelley's Case; but the word "heirs" as used in the deed, meant heir apparent, and did not designate those persons who were to take in indefinite succession.

APPEAL from Fulton Circuit Court.

Essick and *Montgomery*, for appellants.

S. Keith and *J. S. Slick*, for appellee.

The opinion of the court was delivered by

ELLIOTT, J.—The appellee alleges in his complaint that he is the owner of the real estate therein described, and that his title rests upon a deed executed to him in January 1878, by Isaac Cannon, who has since died; that Isaac Cannon's title was founded upon a deed executed to him and his wife, Mary Cannon, by Charles Jackson and wife, on the twentieth day of April 1876; that this deed, omitting the formal parts, reads thus: "This indenture witnesseth

that Charles Jackson and Catharine Jackson his wife, of Fulton county, in the state of Indiana, convey and warrant to Isaac Cannon and Mary Cannon, for the sum of $1200, the following real estate in Fulton county, Indiana, to wit: lot number one hundred and eighty-two, as designated on the plot of Shryock's and Bozarth's addition to the town of Rochester, with all the appurtenances thereunto belonging—the said Isaac Cannon to pay all taxes thereon from the day of sale. After the decease of said Isaac and Mary Cannon, the said property to be equally divided between the heirs of said Isaac Cannon and the heirs of Mary Cannon. If said Isaac Cannon shall die before his wife, she is to hold the said property until her death; and provided Mary Cannon shall die first, then Isaac Cannon is to hold said property until his death, and at the death of both it is to be divided as above stated."

It is also alloged that both Isaac and Mary Cannon are dead; that the deed of the former was made after the death of his wife; that the appellants are the children and grandchildren of Isaac and Mary Cannon; that they claim title to the real estate; that they have in fact no title, and that the appellee is entitled to a decree quieting his title. The prayer is, that the appellee's title be quieted and that the appellants be decreed to have no interest in the real estate.

The controlling question in the case turns upon the effect to be given the deed executed to Isaac and Mary Cannon. If that deed vested a fee in them as tenants in entirety, then the judgment below was right, if it vested in them a life-estate for the lives of both, then the judgment is wrong. Our opinion is that the deed vested in them a life-estate and nothing more. It is true, that where real property is conveyed to husband and wife jointly, and there are no limiting words in the deed, they will take the estate as tenants in entirety: *Davis* v. *Clark*, 26 Ind. 424; *Dodge* v. *Kinzy*, 101 Id. 102, *vide*, authorities cited page 105.

But while the general rule is as we have stated it, there may be conditions, limitations and stipulations in the deed conveying the property which will defeat the operation of the rule. The denial of this proposition involves the affirmation of the proposition that a grantor is powerless to limit or define the estate which he grants, and this would conflict with the fundamental principle that a grantor may, for himself, determine what estate he will grant. To deny this right would be to deny to parties the right to make their own con-

tracts. It seems quite clear, upon principle, that a grantor and his grantees may limit and define the estate granted by the one, and accepted by the others. Although the grantees may be husband and wife, Washburne says, in speaking of conveyances to husband and wife that, "it is always competent to make husband and wife tenants in common by proper words in the deed or devise which they take, indicating such intention:" 1 Wash. Real. Prop. 674. Another author says, "And furthermore, if at any time a joint tenancy or tenancy in common is desired to be created between man and wife, a joint estate will be treated as such, if that intention is clearly expressed in the deed or will:" Fred. Real Prop. § 244. The principle which we have asserted is thus declared by an author whose work for more than half a century has been regarded as authority, "In point of fact and agreeable to natural reason, the husband and wife are distinct and individual persons; and accordingly, when lands are granted to them as tenants in common, thereby treating them without any respect to their social union, they will hold by moieties as other distinct and individual persons would do:" 1 Prest. Estate 132.

The language employed in the deed under examination, plainly declares that Isaac and Mary Cannon are not to take as tenants in entirety. This result would follow from the provision destroying the survivorship, for this is the grand and essential characteristic of such a tenancy. Our conclusion need not, however, be placed on this ground, for the whole force of the language employed is opposed to the theory that the deed creates an estate in fee in the husband and wife. The deed does not contain the language essential to vest in the first taker an estate in fee under the rule in Shelley's Case. There are no words in the deed conveying to Isaac and Mary Cannon, and their heirs, the estate. On the contrary, the conveyance is to them for their joint lives, with the provision that upon the termination of the life-estate, the land shall be divided among their heirs. When the word "heirs" is used, as it is in this instance, it does not designate those who shall take an indefinite succession, but it designates persons who shall take the remainder as soon as the life estate ends. When that word is employed in the sense in which it is here used, it means "heirs apparent," and not "heirs." We have, in recent cases, given this question careful consideration, and we do not deem it necessary to again discuss it: *Fountain Coal Co.* v. *Beckleheimer*, 102 Ind. 76; s. c. 1 N. E.

Rep. 202; *Shimer* v. *Mann*, 99 Ind. 190, *vide* authorized p. 193. There is no reason why the clearly-expressed intention of the parties to the deed should not prevail, for neither the rule in Shelley's Case, nor any other rule of law, opposes the way of the court to a natural and reasonable construction of the deed; and surely no one who reads the deed can doubt that it was intended to vest a life-estate and not a fee in Isaac Cannon and his wife. What we have said disposes of the whole case: for it is impossible that a valid judgment can rest on complaint utterly and irreclaimably bad.

Judgment reversed, with instructions to sustain the demurrer to the complaint, and to proceed in accordance with this opinion.

The question presented in the principal case is an unusual one. A tenancy by entireties occurs whenever an estate vests in two persons, they being, when it so vests, husband and wife. It is not necessary that they should be married when the grant, gift or devise is made, or descent cast, but only when the estate vests. Thus, if they marry before the death of a testator and after the execution of his will; or if a feoffment is made to them while single, but livery of seisin does not take place until after their marriage; or if they, after marriage, recover on a voucher of warranty annexed to an estate of which they are joint-tenants before such marriage, in all these cases they take by entireties: Jickling Anal. L. & Eq. Estates 252; Co. Litt. 187; *Nicholls* v. *Nicholls*, cited in Vin. Abr. *Baron & Feme*; Plowd. Com. 483; Freeman on Co-tenancy, sect. 63; 2 Black. Com. 182; 2 Preston on Abstracts 39; 1 Preston Est. 131; *Gillan* v. *Dixon*, 65 Penn. St. 395.

In joint estates there are four requisites, viz.: unity of interest, unity of title, unity of time and unity of possession: 2 Black. Com. 357. But an additional requisite is necessary in a tenancy by entireties, viz.: but two persons can hold it, and they must be husband and wife at the time the estate vests; while any number can be joint-tenants: *Topping* v. *Sadler*, 5 Jones (N. C.) L. 357. Each has the entire estate, and are not seised by moieties. "They are seised, not *per my et per tout*, but solely and simply *per tout*." *Derr* v. *Hardenburgh*, 5 Halst. (N. J.) 42; s. c. 18 Am. Dec. 371. It has been said that the husband and wife "take but one estate as a corporation would take, being by the common law deemed but one person:" *Taul* v. *Campbell*, 7 Yerg. 319; s. c. 27 Am. Dec. 508. See *Stuckey* v. *Keefe's Exrs.*, 26 Penn. St. 399.

In an early case, a conveyance to husband and wife conveyed the estate "to them and their heirs." The husband was attainted of treason and executed, his wife surviving him. The king thereupon granted the land to a third person and his heirs. In a petition to the king the widow disclosed the entire matter; and upon *scire facias* against the king's patentee, recovered the lands: 1 Inst. 187, *a*; 1 Greenl. Crim. 841.

The principle underlying this case has been frequently followed in England and America. In the case just referred to, the wife, at the death of her husband, became instantly seised of the estate, to the exclusion of the king and her husband's heirs. We cite a few cases from different states: *Bach* v. *Andrews*, 2 Vern. 120; s. c. Prec. Ch. 1; *Doe* v. *Wilson*, 21 B. & A. 303; *Comm.* v. *Kennedy*, 111 Mass. 211; *Thornton* v. *Thornton*, 3 Rand. 179; *Stuckey* v. *Keefe*, 26 Penn. St. 399; *Gibson* v. *Zimmerman*, 12 Mo. 385; *Lux* v. *Hoff*, 47 Ill. 427;

Davis v. *Clark*, 26 Ind. 424; *Hulet* v. *Inlon*, 57 Ind. 412; s. c. 26 Am. Rep. 64; *Doe* v. *Garrison*, 1 Dana 45; *Harding* v. *Springer*, 14 Me. 407; *Fisher* v. *Provin*, 25 Mich. 347; *Duff* v. *Beauchamp*, 50 Miss. 531; *Hemingway* v. *Scales*, 42 Miss. 1; s. c. 2 Am. Rep. 586; *Woodford* v. *Higly*, 1 Winst. 237; *Wright* v. *Sadler*, 20 N. Y. 320; *Thomas* v. *DeBaum*, 1 McCarter Ch. 40; *Ames* v. *Norman*, 4 Sneed 692; *Brownson* v. *Hull*, 16 Vt. 309; *Ketchum* v. *Wolsworth*, 5 Wis. 95; *Robinson* v. *Eagle*, 29 Ark. 202.

Statutes abolishing joint tenancies do not affect a tenancy by entireties thereafter created; and a statute providing that if real estate is conveyed to two or more they shall hold it as tenants in common, unless otherwise expressed in the instrument of conveyance, does not render husband and wife tenants in common of estates conveyed to them while the statute is in force: *In re Shover*, 31 Q. B. (U. C.) 605; *Doe* v. *Hardenbergh*, 5 Halst. 42; s. c. 18 Amer. Dec. 371; *Shaw* v. *Hearsey*, 5 Mass. 521; *Jackson* v. *Stevens*, 16 Johns. 115; *Thornton* v. *Thornton*, 3 Rand. 179; *Hemingway* v. *Scales*, 42 Miss. 1; s. c. 2 Am. Rep. 586; *McCurdy* v. *Canning*, 64 Penn. St. 39.

In Connecticut and Ohio joint tenancies do not exist; and reasoning from this, the courts refuse to recognise tenancies by entirety—a wrong conclusion: *Whittlesey* v. *Fuller*, 14 Conn. 340; *Sergeant* v. *Steinberger*, 2 Ohio 305; *Wilson* v. *Fleming*, 13 Id. 68; *Penn* v. *Cox*, 16 Id. 30. See *Sloan* v. *Frothingham*, 72 Ala. 589, and *Bradley* v. *Love*, 60 Tex. 472.

If real estate is conveyed to husband and wife and a third person, they take one moiety and he the other: Litt., sect. 291; *Doe* v. *Hardenbergh*, 5 Halst. 42; s. c. 18 Amer. Dec. 371; *Doe* v. *Wilson*, 4 B. & A. 303; *Barber* v. *Harris*, 15 Wend. 615; *Back* v. *Andrew*, 2 Vern. 120; *Bricker* v. *Whatley*, 1 Id. 233; *In re Wylde*, 2 D., M. & G. 724; and the same is true in case of legacies: *Gordon* v. *Whieldon*, 18 L. J. Rep. (N. S.) Ch. 5; *Atcheson* v. *Atcheson*, 18 L. J. Rep. (N. S.) Ch. 230; s. c. 11 Beav. 485; see *Johnson* v. *Hart*, 6 W. & S. 919; s. c. 40 Amer. Dec. 565; *Warrington* v. *Warrington*, 12 Hare 56.

If lands vest in a woman and man before they marry, after marriage they hold it either as tenants in common or as joint-tenants: *Moody* v. *Moody*, Amb. 649; *Bevins* v. *Cline*, 21 Ind. 37; *Chandler* v. *Cheney*, 37 Id. 391.

In an old case it was said, that "the same words of conveyance which would make two other persons joint-tenants, will make a husband and wife tenants by the entirety, so that neither can sever the jointure, but the whole must accrue to the survivor:" *Green* v. *King*, 2 W. Bla. 1213. See also, *Martin* v. *Jackson*, 27 Penn. St. 504; *Doe* v. *Parratt*, 5 T. R. 652; *Farmers' Bank* v. *Gregory*, 49 Barb. 155; *Doe* v. *Hardenbergh*, 5 Halst. 45; s. c. 18 Amer. Dec. 371; *Goelet* v. *Gori*, 31 Barb. 314, for like statements. A conveyance or devise 'to them," naming them, creates such a tenancy: *Hamm* v. *Weisenhelter*, 9 Watts 359. But a conveyance made to husband and wife at her request, has been held a conveyance to her, because, it was held, it would be presumed she acted under coercion: *Moore* v. *Moore*, 12 B. Mon. 664; *Babbitt* v. *Scroggin*, 1 Dur. 273. It is not necessary to name the grantees as husband and wife: *Chandler* v. *Cheney*, 37 Ind. 391; see 1 Wash. Real Prop. 577.

But a conveyance to Celestine Beal and John Beal, to be held by Celestine, "as her own property, John having the possession of the same during his lifetime; the possession to return to Celestine if she survives John," and both to pay taxes then due, was held to vest in her the title in fee subject to his life-estate only if he survives her: *Edwards* v. *Beale*, 75 Ind. 401.

The principal case is one of the few that recognise the doctrine that husband and wife may take an estate as joint tenants or tenants in common. This has been a mooted question; there are dicta that they can only take an estate as tenants by entireties: *Green* v. *King*, 2 W. Bla. 121; *Rogers* v. *Benson*, 5 Johns. Ch. 477; *Jackson* v. *Stevens*, 16 Johns. 115; *Barber* v. *Harris*, 15 Wend. 617; and there are cases that though a bond be conveyed to them as tenants in common, they hold it as tenants by entireties, because there is "a legal incapacity to take in severalty, arising from a legal identity; and a grantor cannot remove that incapacity without the intervention of a trustee:" *Dias* v. *Glover*, 1 Hoff. Ch. 76. To same effect: *Stuckey* v. *Keefe*, 26 Penn. St. 400; *Pollock* v. *Kelley*, 6 Irish L. R. (N. S). 373. In the Pennsylvania case it is said, and this is the basis of the decision, that during coverture, husband and wife cannot hold or enjoy any other estate; yet this is manifestly incorrect, for if they are tenants in common, or even joint tenants before marriage, their coverture does not change the nature of the estate, and they still continue to hold the estate in the same way. See *McDermott* v. *French*, 15 N. J. Eq. 89. So if a co-tenant of the husband convey his interest to the husband's wife, she becomes a tenant in common with her husband: *Moore* v. *Moore*, 47 N. Y. 467.

Preston adopts the rule that they can hold otherwise than as tenants by entireties, although he is inclined to somewhat modify the rule as quoted in the principal case: see 2 Abstracts of Title 41. Where a deed was made to husband and wife, "the one equal half part to each," it was held to make them tenants in common: *Hicks* v. *Cochran*, 4 Edw. Ch. 110. So where the husband attempted to sell his interest, and the purchaser brought a partition suit against the wife, alleging that they held as tenants in common, a demurrer to the bill was overruled: *McDermott v. French*, 15 N. J. Eq. 80. There are dicta also that husband and wife may hold as joint tenants or in common: *Chandler* v. *Cheney*, 77 Ind. 391; *Marbury* v. *Cole*, 49 Id. 402; s. c. 33 Amer. Rep. 266.

If the husband has no control over the wife's separate estate, he cannot exclude her from the enjoyment of an estate held by them as tenants by entireties; he cannot lease it, nor sell it without her consent: *Bevine* v. *Cline*, 21 Ind. 37; *Arnold* v. *Arnold*, 30 Id. 305. If a statute prohibit her going his security, then she cannot bind the estate by joining with him in a mortgage to secure the payment of his debt. Such a mortgage is a nullity: *Dodge* v. *Kinzy*, 101 Ind. 102; s. c. 18 Cent. Law Jour. 173.

His conviction of treason does not work a forfeiture of the estate, although it does of his separate estate: *Washburn* v. *Burns*, 34 N. J. L. 19; *Beaumont's Case*, 9 Rep. 140, *k*; Co. Litt. 147, *a*.

At common law the husband has the right to take possession of his wife's separate estate; or, as it has been said, he acquires by marriage, "during coverture, the usufruct of all the real estate which his wife has, in fee simple, fee tail, or for life." This statement of the law has been applied to tenancies by entireties; and during his life, or during coverture, at least, he may dispose of the estate, mortgage it, or lease it; but the exercise of such power, beyond his life, if his wife survive him, will be a nullity: *Taul* v. *Campbell*, 7 Yerg. 319; s. c. 27 Am. Dec. 508; *Ames* v. *Norman*, 4 Sneed 683; *Den* v. *Gardner*, 1 Spencer (N. J.) 556; s. c. 45 Am. Dec. 388; *Barber* v. *Harris*, 15 Wend. 615; *Jackson* v. *McConnell*, 19 Id. 175; s. c. 32 Am. Dec. 439; *Jones* v. *Patterson*, 11 Barb. 572: *Beach* v. *Hollister*, 3 Hun 519; *Meekes* v. *Wright*, 11 Id. 533; *Farmer* v. *Gregory*, 49 Barb. 155; *Torrey* v. *Torrey*, 14 N. Y. 430; *McCurdy* v. *Canning*, 64 Penn. St. 40; *Bennett* v. *Child*, 19 Wis. 765; *Bates* v. *Dandy*, 2

Atk. 207; *Watts* v. *Thomas*, 2 P. Wms. 364; *Draper* v. *Jackson*, 16 Mass. 486.

If the husband, without her consent, contracts for the building of a house upon the real estate, a mechanic's lien for building the house is good for his life, but no longer if she survive him: *Washburn* v. *Burns*, 34 N. J. L. 19. Both may mortgage it, even to secure the husband's debt, if no statute prohibits her becoming his security: *Dodge* v. *Kinzy*, *supra;* it is a valid mortgage: *McDuff* v. *Beauthorp*, 50 Miss. 531; and if either die, the mortgage is still good: *Berrigan* v. *Fleming*, 2 Lea 271.

So if the husband may mortgage or sell it for his life, it may be sold on execution against him; *Ames* v. *Norman*, 4 Sneed 692; *Taul* v. *Campbell*, 7 Yerg. 319; s. c. 27 Am. Dec. 508; *Bennett* v. *Child*, 19 Wis. 362; *Brown* v. *Gale*, 5 N. H. 416; *French* v. *Mehan*, 56 Penn. St. 289; *Brownson* v. *Hull*, 16 Vt. 309.

But where he cannot sell or mortgage the estate for his life, there are authorities which hold a sale of it on execution as utterly void: *Thomas* v. *De Baum*, 14 N. J. Eq. 37; *Jackson* v. *McConnell*, 19 Wend. 178; *Almond* v. *Bonnell*, 76 Ill. 536; *Chandler* v. *Cheney*, 37 Ind. 391, 408; *Bevine* v. *Cline*, 21 Id. 37; *Simpson* v. *Pearson*, 31 Id. 1; *Falls* v. *Hawthorn*, 30 Id. 444; *Hulet* v. *Inlow*, 57 Id. 412; *Davis* v. *Clark*, 26 Id. 454; *Kife* v. *Kife*, 33 N. Y. Eq. 213; *Curtis* v. *Gooding*, 97 Ind. 45; *Barren Creek Ditching Co.* v. *Beck*, 99 Id. 247; *Bartles* v. *Nunen*, 97 N. Y. 152; *Zorntlein* v. *Bram*, 2 N. E. Rep. 388.

A crop raised upon the land held by them, as such tenant, cannot be sold (unless the law gives him possession of the land) on an execution against him alone; nor on one against her alone: *Patton* v. *Rankin*, 68 Ind. 245.

In such an estate there can be no partition, because husband and wife are one in law: *Chandler* v. *Cheney*, 37 Ind. 391; *Strawn* v. *Strawn*, 50 Ill. 33; *Cooper* v. *Cooper*, 76 Id. 57; *Harrer* v *Wallner*, 80 Id. 196; but when divorced they become tenants in common or joint tenants, and partition may then be had: *Ames* v. *Norman*, 4 Sneed 696; *Harrar* v. *Wallner*, 80 Ill. 197; *Lash* v. *Lash*, 58 Ind. 526; 2 Bright on Husband and Wife 365. But it was said that if the husband has alienated such property during coverture, the alienee takes a title not dependent on a continuance of the marital relations; and that the wife, after the divorce is granted, is not entitled to the possession of her moiety from her husband's grantee. The purchase "not made in view of the contingency" of the wife's divorce, cannot be affected by it: *Ames* v. *Norman*, 4 Sneed 696.

Where a wife endeavored to exchange her real estate for other real estate, under the agreement that the title to that received should be taken in her name, and, without her knowledge or consent the title was taken in the name of the husband, and the real estate so received was exchanged by the husband and wife, with money belonging to the husband, for other real estate, the title to which was taken in their names jointly; the real estate last transferred by them, it was held, was not the property of the husband, in considering the question whether or not the title to the real estate for which it was exchanged was taken in the name of the husband and wife for the purpose of defrauding creditors of the husband: *McConnell* v. *Martin*, 52 Ind. 534.

Where dower existed, a wife joined in a deed of conveyance of land held by entireties, executed by her husband, in token of her release of dower, "and of her free consent thereto," without being named in the granting clause. It was held that her interest, on the death of the husband, was not destroyed by this deed: *Waler* v. *Coffin*, 13 Allen 213; *Strawn* v. *Strawn*, 50 Ill. 33. But if both are named in the deed as parties of the first part, and afterwards the parties of the first part are named as grantors, it is the

deed of both: *Thornton* v. *Exchange Bank*, 71 Mo. 221.

Upon the ground that the husband had control over the premises, a sale of liquor by the wife, where a statute prohibited a sale without license, and rendered the owner of the house, where the sale was made fineable upon proof of it, it was held, renders him liable to the fine: *Commonwealth* v. *Kennedy*, 119 Mass. 211.

Husband and wife may reserve a life-estate, and hold it as tenants by entireties: *Jones* v. *Potter*, 89 N. C. 220. If the deed is to them jointly, it cannot be shown by parol that they hold as tenants in common: *Jacobs* v. *Miller*, 50 Mich. 119: see *Myers* v. *Reed*, 17 Fed. Rep. 401.

The usual married woman's enabling acts do not abolish tenancies by entireties, simply because they enable a married woman to hold and control a separate estate: *Myers* v. *Reed*, 17 Fed. Rep. 401; *Bertler* v. *Noonan*, 92 N. Y. 162; s. c. 44 Am. Rep. 361; *Farmers' Bank* v. *Gregory*, 49 Barb. 155; *Beach* v. *Hollister*, 3 Hun 319; *Robinson* v. *Eagle*, 29 Ark. 202; *contra*, *Meeker* v. *Wright*, 76 N. Y. 262; *Matteson* v. *N. Y. Cent. Rd.*, 62 Barb. 373: *Feely* v. *Buckley*, 48 Hun 451; *Diver* v. *Diver*, 56 Penn. St. 106; *Hoffman* v. *Stigers*, 28 Ia. 307; *Clark* v. *Clark*, 56 N. H. 105; *Cooper* v. *Cooper*, 76 Ill. 57.

Upon the second point decided in the principal case we cite a few cases.

In *Fountain County Coal & Mining Co.* v. *Beckleheimer*, relied upon in the principal case, it was said that "words deliberately put into a deed, and put there for a purpose, are not to be lightly considered, or arbitrarily put aside. The words in the deed before us were deliberately written in the instrument, are there for a purpose, and are not without meaning. We can assign them a meaning without encroaching upon any rule of law, and, by doing this, can give just effect to the intention of the grantor." Consequently a deed by the grantor to his daughter, in consideration of natural love and affection "which he bears to his daughter * * * and her present heirs," "to have and hold the same to the said daughter, and her present heirs, forever; the grantor, his heirs and assigns, covenanting with the grantee, her present heirs and assigns, that the title so conveyed is free, clear, and unincumbered," was held to convey to the daughter and her children an estate in common; that the words "her present heirs" meant heirs apparent of the grantee; and that they made out a *descriptio personarum*, and were words of purchase.

So a devise to the "lawful heirs of A.," when it appears in the will that he is living, is equivalent as a description to a devise to his next of kin, or to his children: *Simms* v. *Garrett*, 1 Dev. & Bat. 393. So a devise to "A. and his heirs now living" was held a good devise to A.'s children: *Goodright* v. *White*, 2 W. Bl. 1010. See *Hearne* v. *Horton*, 1 Denio 165; *James* v. *Richardson*, 1 Vent. 334; *Roberts* v. *Ogbourne*, 37 Ala. 175; *Powell* v. *Glenn*, 21 Id. 458.

So a devise to the testator's brother's "legal heirs," to his sister's "legal heirs," and to his brother-in-law's "legal heirs," "to be divided equally between each of the heirs above named after the decease of my wife," was held to refer to the children of the brothers, sisters and brother-in-law: *Vonnorsdall* v. *Van Deventer*, 51 Barb. 137; see *Blake* v. *Stone*, 27 Vt. 475 (a deed); *Prior* v. *Quackenbush*, 29 Ind. 475 (a deed).

But where lands were devised to M., until his youngest child became of age, "upon the happening of which event the fee simple of said lands shall then vest absolutely in the said M., and his heirs, and may by him or them be disposed of as he or they may judge best, for his or their interest;" it was held, that the devise vested in M. an estate in fee sim-

ple when his youngest child reached full age, with power in M., then to dispose of it as he saw fit; and if he did not dispose of it during his life, then his heirs could dispose of it absolutely; *Shimer* v. *Mann*, 99 Ind. 190. See *Schoonmaker* v. *Sheely*, 3 Denio 482; *Burchett* v. *Duadont*, 2 Vent. 311; *Darbison* v. *Beaumont*, 1 P. Wms. 229; *Jack* v. *Fetherson*, 9 Bligh. 237; *Poole* v. *Poole*, 3 B. & P. 620; *Teller* v. *Attwood*, 15 Q. B. 929; *Mills* v. *Seward*, 1 J. & H. 733; *Grimson* v. *Downing*, 4 Drew. 125; *Anderson* v. *Anderson*, 30 Beav. 209; *Moore* v. *Brooks*, 12 Gratt. 135; *Star Gloss Co.* v. *Morey*, 109 Mass. 570; *Scott* v. *Guernsey*, 48 N. Y. 106; *Urich's Appeal*, 86 Penn. St. 386; s. c. 27 Am. Rep. 707; *King* v. *Beck*, 15 Ohio 559; *Guthrie's Appeal*, 37 Penn. St. 9.

A devise of real estate by a testator to his son "during his natural life, and at his death to his children, if he have any, and if he have no children, or if there be no heirs of his body, then the real estate to his other heirs of his own blood, equally, and if he die leaving a wife, his said wife to have a life-estate in said real property, said estate to terminate at her death," was held, to vest in the son, unmarried and childless at the testator's death, only a life-estate: *Ridgway* v. *Lamphear*, 99 Ind. 251. See *Daniel* v. *Whartenby*, 17 Wall. 639; *Montgomery* v. *Montgomery*, 3 Jones & L. 46; *Webster* v. *Cooper*, 14 How. 488; *Powell* v. *Glenn*, 21 Ala. 458.

W. W. THORNTON.

Crawfordsville, Ind.

LEGAL NOTES.

THE recent decision of the Supreme Court of the United States in the Express Company Cases[1] has been awaited with no little interest by the profession.

The three suits, presenting substantially the same questions, were heard together and argued by well known counsel. Each was brought by an express company against a railway company, to compel the latter to afford it the same express facilities it had formerly enjoyed under a contract then abrogated. The several Circuit Courts from which the cases were appealed, had each entered a decree in favor of the express companies, the material part of one of which, embodying the views entertained and the conclusions reached, is here given:

"(1) That the express business, as fully described and shown in the record, is a branch of the carrying trade, that has by the necessities of commerce and the usages of those engaged in transportation, become known and recognised so as to require the court to take notice of the same, as distinct from the ordinary transportation of the large mass of freight usually carried on steamboats and railroads.

"(2) That it has become the law and usage, and is one of the necessities of the express business, that the property confided to an express company for transportation should be kept while in transit in the immediate charge of the messenger or agent of such express company.

"(3) That to refuse permission to such messenger or agent to accompany such property on the steamboats or railroads on which it is to be carried, and to deny to him the right to the custody of the property while so carried, would be destructive of the express business, and of the

[1] *St. Louis, I. M. & S. Ry. Co.* v. *Southern Express Co.*; *Memphis & L. Rd. Co.*, as reorganized, v. *Same*; *Missouri, K. & T. Ry. Co.* v. *Dinsmore, President of the Adams Express Co., &c.*